

James S. Monroe, Esq. (SBN 102328)
NIXON PEABODY LLP
One Embarcadero Center, Suite 1800
San Francisco, CA 94111-3996
Telephone: (415) 984-8200
Facsimile: (415) 984-8300
E-mail: jmonroe@nixonpeabody.com

Attorneys for Creditor, Roosevelt Fund, L.P.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,
Plaintiff,

v.

VIPER CAPITAL MANAGEMENT, LLC, et. al,
Defendants.

and

COMPASS WEST FUND, et al.,
Relief Defendants.

In re:

EDWARD SEWON EHEE,

Debtor.

In re:

COMPASS FUND MANAGEMENT,

Debtor.

In re:

COMPASS WEST FUND L.P.,

Debtor.

Nos. C 06-06966 SI; and
C 07-02507 SI; C 07-02508 SI;
C 07-2509 SI

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR JOINT
ADMINISTRATION (ORIGINALLY
FILED WITH THE BANKRUPTCY
COURT ON APRIL 9, 2007)**

Date: July 13, 2007

Time: 9:00 a.m.

Place: Courtroom 10

Judge: Hon. Susan Illston

1 The undersigned hereby refiles the attached document originally filed with the U.S.
2 Bankruptcy Court N.D. Cal. on April 9, 2007.
3

4 Dated: June 27, 2007

Respectfully Submitted,

5 NIXON PEABODY LLP
6

7 By: /s/ James S. Monroe
8 James S. Monroe, Esq.
9 Attorneys for Creditor,
10 Roosevelt Fund, L.P.
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7 E-mail: jmonroe@nixonpeabody.com

8 Attorneys for Creditor, Roosevelt Fund, L.P.

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 In re:

13 EDWARD SEWON EHEE,

14 Debtor.

Case No. 07-40126
Chapter 7

15 In re:

16 COMPASS FUND MANAGEMENT,

17 Debtor.

Case No. 07-40129
Chapter 7

18 In re:

19 COMPASS WEST FUND L.P.,

20 Debtor.

Case No. 07-40130
Chapter 7

21 **MEMORANDUM OF POINTS AND**
22 **AUTHORITIES IN SUPPORT OF MOTION**
23 **FOR JOINT ADMINISTRATION AND**
24 **REQUEST FOR A STATUS CONFERENCE**

25 Date: May 3, 2007
26 Time: 3:00 p.m.
27 Place: Courtroom 201
28 Judge: Hon. Leslie J. Tchaikovsky

1 Roosevelt Fund, L.P. ("Roosevelt Fund")¹ by and through its counsel, Nixon Peabody LLP,
 2 hereby files its motion (the "Motion") for entry of an order directing the joint administration of the
 3 above captioned chapter 7 cases and ordering a status conference to be held on May 3, 2007, or the
 4 Court's earliest convenience. In support of this Motion, Roosevelt Fund respectfully states as
 5 follows:

6 **I. JURISDICTION**

7 This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a
 8 core proceeding within the meaning of 28 U.S.C. § 157 (b)(2).
 9

10 Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

11 The statutory predicate for the relief requested herein is Rule 1015(b) of the Federal Rules of
 12 Bankruptcy Procedure (the "Bankruptcy Rules") and § 105(a) of title 11 of the United States Code
 13 (the "Bankruptcy Code").

14 **II. FACTUAL BACKGROUND**

15 On November 11, 2006, the Securities and Exchange Commission (the "SEC") initiated an
 16 action against Viper Capital Management, LLC, Compass Fund Management, LLC, Edward Ehee,
 17 Compass West Fund, LP, Viper Founders Fund, LP, Viper Investments, LP, Albert Ehee, Robert
 18 Ehee, and Jennifer Ehee alleging various securities fraud violations, in the United States District
 19 Court for the Northern District of California (San Francisco Division), Case No. 06-06966 (the "SEC
 20 Litigation").

21 Shortly thereafter, on November, 22, 2006, Roosevelt Fund filed a complaint (the
 22 "Complaint") against the above captioned debtors (the "Debtors")² alleging, *inter alia*, violation of
 23 federal securities laws; breach of contract; unjust enrichment; breach of fiduciary duty; fraud;
 24 conspiracy to commit fraud; negligent misrepresentation; fraudulent conveyance; constructive

25
 26 ¹ Roosevelt Fund, L.P. was previously known as A.A.G. Roosevelt Fund, L.P. and its official corporate name was
 previously Anira Advisory Group Roosevelt Fund, L.P.

27 ² Upon information and belief, Compass Fund Management, LLC and Compass West Fund L.P. are entities that
 28 were owned and/or controlled by the Mr. Ehee.

1 fraudulent conveyance; violation of Cal. Bus. & Prof. Code §17200; constructive trust; and seeking
2 declaratory relief, in the United States District Court for the Northern District of California (San
3 Francisco Division) Case No. 06-7270.

4 The Debtors failed to answer the Complaint and are subject to default pursuant to Fed. R. Civ.
5 P. 55.

6 On January 12, 2007 (the "Petition Date"), Roosevelt Fund filed involuntary petitions against
7 the above captioned debtors (the "Debtors") under chapter 7 of the Bankruptcy Code.

8 These three closely related cases were being administered under three different. See In re
9 Compass West Fund L.P. (Bankr. N.D. Cal. (San Francisco) Case No. 07-40130, Hon. R. Newsome
10 presiding); In re Compass Fund Management (Bankr. N.D. Cal. (San Francisco) Case No. 07-40129,
11 Hon. E. Jellen presiding); In re Edward Sewon Ehee, (Bankr. N.D. Cal. (San Francisco) Case No. 07-
12 40126, Hon. L. Tchaikovsky presiding).

13 On April 5, 2007, this Court entered an order transferring all three cases to Judge
14 Tchaikovsky.

15 On February 22, 2007, Roosevelt Fund and the Debtors entered into a stipulation to extend
16 time to respond to the involuntary petitions in each case to February 28, 2007. See e.g. Case No. 07-
17 40126, Dkt. No. 6.

18 On February 28, 2007, Mr. Ehee responded to the involuntary petition filed against him (Case
19 No. 07-40126, Dkt. No. 8). Neither Compass West Fund LP nor Compass Fund Management, LP
20 has responded to the involuntary petitions filed against them.

21 On February 20, 2007, the Hon. Randall J. Newsome entered an order for relief in an
22 involuntary case against Compass West Fund LP (Case No. 07-40130, Dkt. No. 5). A trustee was
23 appointed in this case and a section 341(a) meeting of creditors has been scheduled for April 17,
24 2007.

25 On March 29, 2007, Roosevelt Fund filed a motion for entry of an order granting relief
26 requested in the petition filed against Compass Fund Management, LP pursuant to Federal Rule of
27 Bankruptcy Procedure Rule 1013.
28

1
2 Roosevelt Fund is currently in discussions with the SEC concerning the status of the SEC
3 Litigation and matters that may impact the prosecution of the bankruptcy cases and claims that might
4 be brought against third parties in these bankruptcy cases.

5 Upon information and belief, there may be creditors who have received fraudulent,
6 preferential or otherwise avoidable transfers under applicable State and Federal Law from one or
7 more of the Debtors.

8 **III. RELIEF REQUESTED**

9 In order to optimally administer the Debtors' pending Chapter 7 Cases, by this Motion,
10 Roosevelt Fund seeks entry of an order pursuant to Bankruptcy Rule 1015(b) authorizing the joint
11 administration, for procedural purposes only, under the case number assigned to Edward Sewon Ehee
12 ("Mr. Ehee").

13 Further, Roosevelt Fund requests that a status conference be held to determine the procedural
14 posture of these cases and to establish a discovery and litigation schedule for the contested petition of
15 Mr. Ehee pursuant to section 105(a) of the Bankruptcy Code.

16 **A. JOINT ADMINISTRATION OF THESE CASES IS WARRANTED.**

17 Bankruptcy Rule 1015(b) provides, in relevant part, that "[i]f . . . two or more petitions are
18 pending in the same court by or against . . . a debtor and an affiliate, the court may order joint
19 administration of the estates." See Fed. R. Bankr. P. 1015(b). The Debtors are "affiliates" as that
20 term is defined under section 102(2) of the Bankruptcy Code. Accordingly, the Court is authorized to
21 grant the relief requested herein.

22 By jointly administering these cases, the Debtors and their creditors will be able to reduce the
23 fees and costs resulting from the administration of these cases and ease the onerous administrative
24 burden of having to file multiple and duplicative documents.

25 Entry of an order directing the joint administration of these chapter 7 cases will avoid
26 duplicative notices, applications, and orders, thereby saving the Debtors and their creditors
27 considerable time and expense. The rights of creditors will not be adversely affected as this Motion
28 requests only administrative, and not substantive, consolidation of the Debtors' estates. The rights of

1 all creditors will be enhanced by the reduced costs that will result from the joint administration of
 2 these chapter 7 cases. The Court also will be relieved of the burden of entering duplicative orders
 3 and maintaining duplicative files. Finally, supervision of the administrative aspects of these chapter
 4 cases by a single chapter 7 trustee will be simplified.

5 Accordingly, Roosevelt respectfully requests the caption of these chapter 7 cases to be
 6 modified to reflect the joint administration of these chapter 7 cases, as follows:
 7

8 In re:

9 EDWARD SEWON EHEE, et al.,

10 Debtors.

Case No. 07-40126
 Jointly Administered
 Chapter 7

11
 12
 13 Roosevelt Fund also seeks the Court's direction that a notation substantially similar to the
 14 following notation be entered on the docket of each of the Debtors to reflect the joint administration
 15 of these cases:

16 "An order has been entered in this case directing the procedural consolidation and
 17 joint administration of this chapter 7 case. The docket in Case No. 07-40126
 18 should be consulted for all matters affecting these cases."

19 **B. REQUEST FOR A STATUS CONFERENCE**

20 As the involuntary petitions of each of the Debtors are currently in different phases, it is
 21 appropriate for this Court to order a status conference. Roosevelt Fund suggests that May 3, 2007,
 22 concurrently with the hearing of this Motion or at any time earlier at the Court's convenience, would
 23 be an appropriate date to determine the procedural posture of these cases going forward.

24 Pursuant to section 105 of the Bankruptcy Code, this Court "may issue any order . . . that is
 25 necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105.

26 Roosevelt Fund requests, that with the joint administration of these cases, a single chapter 7
 27 trustee be appointed in these cases, without prejudice to Roosevelt Fund's ability to elect a trustee
 28 pursuant to § 702 of the Bankruptcy Code.

1 Further, Roosevelt Fund requests that at the status conference, the Court establish a discovery
2 and trial schedule relating to the litigation of Mr. Ehee's contested chapter 7 petition.

3 **IV. CONCLUSION**

4 No prior motion for relief requested herein has been made to this or any other court.

5 WHEREFORE, Roosevelt Fund respectfully requests entry of an order, substantially in the
6 form attached to the Motion as Exhibit A, (a) directing the joint administration of these chapter 7
7 cases; (b) scheduling a status conference for May 3, 2007 or such date that is so ordered by this
8 Court; and, (c) granting such other further relief as just and proper.

9
10 Dated: April 9, 2007

Respectfully Submitted,

11 NIXON PEABODY LLP

12
13 By: /s/ James S. Monroe

14 James S. Monroe, Esq.
15 Attorneys for Creditor,
16 Roosevelt Fund, L.P.